

# Fax

To: Examiner Hilary L. Gutman  
From: Gordon K. Harris, Reg. No. 28,615  
Fax: Pages: 7 + 2 (Appendix)  
(703) 872-9306  
Phone: (703) 305-0496 Date: January 13, 2005

Group Art Unit: 3612

Re: Application No. 10/646,188

See the attached: Transmittal Form; Fee Transmittal; and APPEAL BRIEF.

*I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (703) 872-9306) on January 13, 2005.*

Susan J. Sidwell

*Susan J. Sidwell*

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PTO/SB/21 (08-00)

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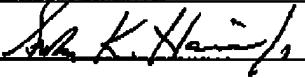
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		Application Number	10/646,188
		Filing Date	August 22, 2003
		First Named Inventor	Rhodes, et al.
		Group Art Unit	3612
		Examiner Name	Hillary L. Gutman
Total Number of Pages in This Submission		Attorney Docket Number	708441US5

## ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Response <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request (one month) <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers <i>(for an Application)</i> <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____  Remarks	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to Group <i>(Appeal Notice, Brief, Reply Brief) (or Duplicate)</i> <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) <i>(please identify below):</i> <i>—return receipt postcard—</i>
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## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Harness, Dickey & Pierca, P.L.C.	Attorney/Agent Name Gordon K. Harris, Jr.	Reg. No. 28,615
Signature			
Date	January 13, 2005		

## CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: MS Appeal Brief - Patents; Commissioner for Patents, PO Box 1450, Alexandria VA 22313-1450

Typed or printed name	Susan J. Sidwell
Signature	
	Date

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# FEE TRANSMITTAL for FY 2001

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT (5) 500

Complete if Known	
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METHOD OF PAYMENT (check one)				FEE CALCULATION (continued)																																																																																																																																																																																																	
1. <input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge indicated fees and credit any over payments to:  <b>Deposit Account Number:</b> 03-1800  <b>Deposit Account Name:</b> DaimlerChrysler Intellectual Capital Corporation  <input checked="" type="checkbox"/> Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17 <input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27				<b>3. ADDITIONAL FEES</b> <table border="1"> <thead> <tr> <th>Large Entity Fee Code (\$)</th> <th>Fee (\$)</th> <th>Small Entity Fee Code (\$)</th> <th>Fee (\$)</th> <th>Fee Description</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr><td>105</td><td>130</td><td>205</td><td>65</td><td>Surcharge - late filing fee or oath</td><td></td></tr> <tr><td>127</td><td>50</td><td>227</td><td>25</td><td>Surcharge - late provisional filing fee or cover sheet</td><td></td></tr> <tr><td>139</td><td>130</td><td>139</td><td>130</td><td>Non-English specification</td><td></td></tr> <tr><td>147</td><td>2,520</td><td>147</td><td>2,520</td><td>For filing a request for reexamination</td><td></td></tr> <tr><td>112</td><td>920*</td><td>112</td><td>920*</td><td>Requesting publication of SIR prior to Examiner action</td><td></td></tr> <tr><td>113</td><td>1,840*</td><td>113</td><td>1,840*</td><td>Requesting publication of SIR after Examiner action</td><td></td></tr> <tr><td>115</td><td>110</td><td>216</td><td>55</td><td>Extension for reply within first month</td><td></td></tr> <tr><td>116</td><td>390</td><td>216</td><td>195</td><td>Extension for reply within second month</td><td></td></tr> <tr><td>117</td><td>890</td><td>217</td><td>445</td><td>Extension for reply within third month</td><td></td></tr> <tr><td>118</td><td>1,390</td><td>218</td><td>695</td><td>Extension for reply within fourth month</td><td></td></tr> <tr><td>128</td><td>1,890</td><td>228</td><td>945</td><td>Extension for reply within fifth month</td><td></td></tr> <tr><td>119</td><td>310</td><td>219</td><td>155</td><td>Notice of Appeal</td><td></td></tr> <tr><td>120</td><td>340</td><td>220</td><td>155</td><td>Filing a brief in support of an appeal</td><td>600</td></tr> <tr><td>121</td><td>270</td><td>221</td><td>135</td><td>Request for oral hearing</td><td></td></tr> <tr><td>138</td><td>1,510</td><td>138</td><td>1,510</td><td>Petition to institute a public use proceeding</td><td></td></tr> <tr><td>140</td><td>110</td><td>240</td><td>55</td><td>Petition to revive - unavoidable</td><td></td></tr> <tr><td>141</td><td>1,240</td><td>241</td><td>620</td><td>Petition to revive - unintentional</td><td></td></tr> <tr><td>142</td><td>1,240</td><td>242</td><td>620</td><td>Utility issue fee (or reissue)</td><td></td></tr> <tr><td>143</td><td>440</td><td>243</td><td>220</td><td>Design issue fee</td><td></td></tr> <tr><td>144</td><td>600</td><td>244</td><td>300</td><td>Plant issue fee</td><td></td></tr> <tr><td>122</td><td>130</td><td>122</td><td>130</td><td>Petitions to the Commissioner</td><td></td></tr> <tr><td>123</td><td>130</td><td>123</td><td>130</td><td>Petitions related to provisional applications</td><td></td></tr> <tr><td>128</td><td>180</td><td>128</td><td>180</td><td>Submission of Information Disclosure Stmt</td><td></td></tr> <tr><td>581</td><td>40</td><td>581</td><td>40</td><td>Recording each patent assignment per property (times number of properties)</td><td></td></tr> <tr><td>146</td><td>710</td><td>248</td><td>355</td><td>Filing a submission after final rejection (37 CFR § 1.129(a))</td><td></td></tr> <tr><td>149</td><td>710</td><td>249</td><td>355</td><td>For each additional invention to be examined (37 CFR § 1.129(b))</td><td></td></tr> <tr><td>179</td><td>710</td><td>279</td><td>355</td><td>Request for Continued Examination (RCE)</td><td></td></tr> <tr><td>169</td><td>900</td><td>169</td><td>900</td><td>Request for expedited examination of a design application</td><td></td></tr> <tr> <td colspan="4">SUBTOTAL (1) (\$ 0)</td> <td colspan="4">Other fee (specify) _____</td> </tr> <tr> <td colspan="4">*For number previously paid, if greater; 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Name (Print/Type)	Gordon K. Hedges, Jr.	Registration No. Attorney/Agent	28,615	Telephone	248-641-1600																																																																																																																																																																																																
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Attorney Docket No. 706441US5

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Group Art Unit: 3612 )  
Examiner: Hilary L. Gutman )  
Serial No. 10/646,188 )  
Applicants: Rhodes et al. )  
Filed: August 22, 2003 )  
For: STADIUM STYLE MOTOR )  
VEHICLE SEAT )  
Attorney Docket No.: 706441US5 )

APPEAL BRIEF

JAN 13 2005

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This is an appeal from the Final Rejection of Claims 1 and 3—9 under 35 U.S.C. §102 (b) in the Office Action mailed July 27, 2004.

**I. REAL PARTY IN INTEREST**

The real party in interest is DaimlerChrysler Corporation, a corporation organized and existing under the laws of the State of Delaware U.S.A., and having a principal place of business in Auburn Hills, Michigan, U.S.A.

**II. RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences which would directly affect or be directly affected by or have a bearing on the Board's decision in the instant appeal.

### **III. STATUS OF THE CLAIMS**

Claims 1 and 3—9 are pending in this application. All pending claims have been rejected and are the subject of this Appeal. A copy of Claims 1 and 3—9 is set forth in the Appendix hereto.

### **IV. STATUS OF AMENDMENTS**

In response to an initial Office Action of April 13, 2004, Applicants filed an Amendment and Response Under 37 C.F.R. § 111 amending Claim 1 and canceling Claims 2 and 10—13.

In response to the Final Office Action of July 27, 2004, Applicants filed a Response After Final Rejection on October 5, 2004, with no further amendment to the pending claims. A Notice of Appeal was filed November 19, 2004.

### **V. SUMMARY OF THE INVENTION**

Applicants claim a seat assembly for a motor vehicle having a floor, the seat assembly including a tub disposed at least partially in the floor, at least one rear leg non-releasably secured to the floor of the vehicle and being pivotable to stow the seat assembly in the tub. The seat assembly also includes a seat back fixedly mounted on the at least one rear leg and at least one front leg releasably secured to the floor of the vehicle.

### **VI. ISSUE**

Whether or not Claims 1 and 3—9 are unpatentable under 35 U.S.C. §102(b) as being anticipated by Cannera et al. (U.S. Patent No. 5,195,795).

## VII. GROUPING OF THE CLAIMS

Claims 1 and 3—9 stand rejected under 35 U.S.C. §102(b) as being anticipated by Cannera et al., U.S. Patent No. 5,195,795. These claims stand or fall together.

## VIII. ARGUMENT

### The Rejection

Claims 1 and 3—9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Cannera et al. Applicants respectfully traverse the Examiner's rejection of these claims. As discussed below, the Examiner has failed to state a prima facie case of anticipation under 35 U.S.C. § 102(b), because the cited Cannera et al. reference fails to set forth each and every limitation of the claimed invention, either explicitly or inherently. General Electric Co. v. Nintendo Co., 50 U.S.P.Q.2d 1910, 1915 (Fed. Cir. 1989).

The Cannera et al. reference fails to disclose "at least one front leg releasably secured to the floor of the vehicle," as called for in Applicants' independent Claims 1 and 8. Cannera's front leg 20 is clearly shown coupled to a floor of the vehicle at all times—either in a deployed seat position as shown in Fig. 2 or in a completely stowed seat position as shown in Fig. 4. Cannera makes no suggestion of making leg 20 releasable from the vehicle floor, nor does Cannera suggest that pin 88 (Fig. 5) is removable from yoke 84. The Examiner's assertion in the Final Rejection that "even if those members were permanently attached, that with enough force one could indeed detach the front leg from the floor" would render the terms "releasable" and "nonreleasable" as meaning the same thing. Accordingly, Applicants are entitled to a grant of a patent. General Electric Co., supra at 1915.

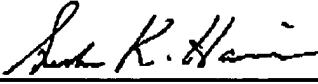
**IX. SUMMARY**

The rejection of Claims 1 and 3—9 under 35 U.S.C. §102(b) is in error. There is no disclosure in the art or record of Applicants' claimed invention. The Examiner has failed to state a *prima facie* case under 35 U.S.C. §102(b) and, accordingly, Applicants are entitled to a reversal of the Final Rejection of Claims 1 and 3—9 and the grant of a patent over the instant application.

Respectfully submitted,

Louis A. Rhodes, et al.

Dated: January 13, 2005

BY:   
Gordon K. Haris, Reg. No. 28,615  
Attorneys for Applicants

Ralph E. Smith  
DaimlerChrysler Intellectual Capital Corporation  
CIMS 483-02-19  
800 Chrysler Drive East  
Auburn Hills, Michigan 48326-2757  
Phone: (248) 944-6519